



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,904	08/25/2003	Matthew R. Selmon	LMND.P044DC	2339

53186 7590 01/10/2006

COURTNEY STANIFORD & GREGORY LLP  
P.O. BOX 9686  
SAN JOSE, CA 95157

EXAMINER
----------

TRUONG, KEVIN THAO

ART UNIT	PAPER NUMBER
----------	--------------

3731

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species of figures 17A and 17B, claims 57, 59-61, 63-65, 68-72, 74-80, and 83-88 in the reply filed on 11/18/2005 is acknowledged.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 57, 59-61, 63-65, 68-72, 74-80, and 83-88 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5-11, 17, 18, 21, and 23-31 of U.S. Patent No. 6,508,825. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively broad subject matter claimed in the instant application such as an actuation assembly

Art Unit: 3731

positioned along the catheter shaft which causes the movement of opening and closing. As a result, it would have been obvious in view of the relatively detailed subject matter of the patent claims.

4. Claims 57, 59-61, 63-65, 68-72, 74-80, and 83-88 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5-14, and 19-21 of U.S. Patent No. 6,638,247. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively broad subject matter claimed in the instant application such as an actuation assembly positioned along the catheter shaft which causes the movement of opening and closing. As a result, it would have been obvious in view of the relatively detailed subject matter of the patent claims.

5. Claims 57, 59, 63-65, 69-72, 77-80, and 86-88 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 8-10, and 13-15 of U.S. Patent No. 6,800,085. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively broad subject matter claimed in the instant application such as an actuation assembly positioned along the catheter shaft which causes the movement of opening and closing. As a result, it would have been obvious in view of the relatively detailed subject matter of the patent claims.

6. Claims 57, 69, 70, and 86-88 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 4 of U.S. Patent No. 6,599,304. Although the conflicting claims are not identical, they are not

Art Unit: 3731

patentably distinct from each other because the relatively broad subject matter claimed in the instant application such as an actuation assembly positioned along the catheter shaft which causes the movement of opening and closing. As a result, it would have been obvious in view of the relatively detailed subject matter of the patent claims.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 57, 59-61, 63-65, 68-72, 74-80, and 83-88 are rejected under 35 U.S.C. 102(b) as being fully anticipated by Knoepfler (U.S. 5,300,087).

Knoepfler discloses the claimed invention in figures 1 and 2, a catheter shaft (16) having a lumen (30), moving jaw (41), fixed extension (jaw) (40) and hinge pin assembly (42,44); an actuation assembly (32) positioned along the catheter shaft (16), wherein the actuation assembly (32) causes the moving jaw (41) in contact with tissue of a blood vessel wall to separate material of the vascular occlusion (see col. 4, lines 54-60); wherein the moving jaw (41) and fixed extension (40) including guidewire lumens (45,47); furthermore, wherein the moving jaw (41) spreads by moving through an arc away from the longitudinal axis of the catheter shaft (16) with respect to a fixed pivotal position of a proximal end of the moving jaw (41).

Art Unit: 3731

9. Claims 57, 59-61, 63-65, 68-72, 74-80, and 83-88 are rejected under 35

U.S.C. 102(b) as being fully anticipated by O'Connor (U.S. 5,603,724).

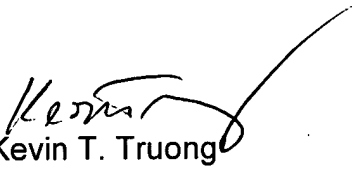
O'Connor discloses the claimed invention in figures 1-5, a catheter shaft (10) having a lumen along the length, moving jaw (30), fixed extension (jaw) (20) and hinge pin assembly (22,42); an actuation assembly (50) positioned along the catheter shaft (10), wherein the actuation assembly (50) causes the moving jaw (30) in contact with tissue of a blood vessel wall to separate material of the vascular occlusion; wherein the moving jaw (30) and fixed extension (20) including guidewire lumens (21,31); furthermore, wherein the moving jaw (30) spreads by moving through an arc away from the longitudinal axis of the catheter shaft (10) with respect to a fixed pivotal position of a proximal end of the moving jaw (30). Note, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:00 PM..

Art Unit: 3731

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin T. Truong  
Primary Examiner  
Art Unit 3731

ktt